THE SUPREME COURT OF WASHINGTON
No. 82374-0

BAINBRIDGE ISLAND POLICE GUILD and STEVEN CAIN,

Respondents,

v.

THE CITY OF PUYALLUP, a municipal corporation,

Respondent,

and

KIM KOENIG, an individual, and LAWRENCE KOSS, an individual,

Appellants.

BRIEF OF RESPONDENTS BAINBRIDGE ISLAND POLICE GUILD AND STEVEN CAIN

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I. INTRODUCTION

The Washington State Public Records Act enables citizens to access public records from state agencies. It promotes efficiency, transparency, and accountability in government. While the Act is to be construed liberally, the Legislature has crafted various exceptions under which specific public records are exempt from disclosure. In this case, appellants Kim Koenig and Lawrence Koss requested from the City of Puyallup its criminal investigation materials related to Ms. Koenig's complaint of sexual misconduct against Bainbridge Island Police Officer Steve Cain. The prosecuting attorney's office declined to file any criminal charges against Officer Cain, and Ms. Koenig's complaint against Officer Cain was found to be unsubstantiated.

Furthermore, both the Kitsap County Superior Court and the Pierce County Superior Court have ruled that these investigation records are exempt from disclosure under the Public Records Act, because disclosure would violate Officer Cain's right to privacy. Disclosure would be highly offensive to a reasonable person, and the content of the requested materials is not of legitimate public concern. The Bainbridge Island Police Guild and Officer Cain respectfully requests that this Court uphold the trial court's order and enjoin the City of Puyallup from disclosing the

requested materials to Ms. Koenig, Mr. Koss, or any other member of the public.

This case presents the Court with a clear opportunity to establish a bright line, something to guide public agencies that are subject to the Public Records Act and superior courts throughout the state that are asked to determine whether a request is valid or invalid. Police agencies constantly receive requests for internal investigations and/or criminal investigations of alleged officer misconduct. Consistent with this Court's opinion in *Bellevue John Does 1-11 v. Bellevue School Dist. No. 405*, 164 Wn.2d 199, 189 P.3d 139 (2008), the bright line that should be adopted is as follows: any investigation of alleged police sexual misconduct, whether criminal or "internal," that results in a finding other than sustained should be exempt from public disclosure under RCW 42.56.240(1) and RCW 42.56.050 on the basis that the disclosure would violate the officer's right of privacy.

II. STATEMENT OF THE CASE

On September 30, 2007, Officer Steve Cain, along with other officers from the Bainbridge Island Police Department, responded to an incident involving Kim Koenig. (CP 54.) Ms. Koenig's husband had been pulled over under suspicion of driving under the influence, and Ms. Koenig was hindering the police investigation. (*Id.*) Shortly after the incident

occurred, Ms. Koenig lodged a formal complaint involving sexual misconduct against Officer Cain with the Bainbridge Island Police Department. (*Id.*)

The Bainbridge Island Police Department accepts and investigates all complaints of employee misconduct and wrongdoing from any citizen or agency employee. Formal complaints are forwarded up the chain of command to the Chief of Police, who decides who will investigate the complaint. The Chief may assign an investigator within the Department or request that another agency conduct the investigation. Generally, criminal investigations are handled by outside agencies. In the present case, Bainbridge Island Police Chief Ed Haney asked the Puyallup Police Department to conduct a criminal investigation into Officer Cain's conduct. He also requested that the Mercer Island Police Department conduct an internal investigation into Ms. Koenig's complaint. (CP 2-3, 68, and 72.)

The Puyallup Police Department investigated Ms. Koenig's criminal allegations and forwarded its information to the Kitsap County Prosecuting Attorney for review. (CP 72.) The Prosecutor declined to initiate any charges against Officer Cain, on the basis that there was "not sufficient evidence to establish that there was any inappropriate behavior by this police officer." (*Id.*)

Mercer Island Police Commander David Jokinen conducted the

internal investigation of Ms. Koenig's complaint. (CP 68.) He completed his report on November 16, 2007, and recommended that the disposition of the investigation of Officer Cain's actions be "EXONERATED." (*Id.*)

After an internal investigation has taken place, the Chief reviews the investigation to determine completeness. If the complaint is non-criminal, the Chief will also prepare a report and include the disposition of each allegation. By letter dated January 22, 2008, Chief Haney informed Officer Cain that the internal investigations were completed. (CP 70.) He told Officer Cain that the findings of each investigation were "unsubstantiated." (*Id.*) He then stated that he agreed with the agency findings and closed the investigation with the finding of "Unsubstantiated." (*Id.*)

In February 2008, the City of Bainbridge Island received multiple public records requests for the Mercer Island internal investigation materials and the Puyallup criminal investigation materials. (CP 55.) The City of Bainbridge Island allowed the first requestor, a journalist named Althea Paulson, to view the criminal investigation materials as non-conviction data, and informed her it would disclose the internal investigation materials absent an injunction or other legal action preventing disclosure. (*Id.*)

The Bainbridge Island Police Guild and Officer Cain then filed a Complaint in the Kitsap County Superior Court to prevent disclosure of these requested materials, and on May 9, 2008, Judge Russell W. Hartman

issued an oral opinion on that issue. (CP 74-96.) Before making his decision, Judge Hartman reviewed the requested documents *in camera.* (CP 81.) He stated in his oral opinion: "I did examine every page of both those [investigation files], and read with some care a great deal of what was in those documents as I did the examination." (CP 81-82.) On May 9, 2008, after full briefing by the parties, oral argument, and an *in camera* review, Judge Hartman ruled that disclosure of the requested documents, both the internal investigation and the criminal investigation materials, would violate Officer Cain's right to privacy. (CP 98-100.) Accordingly, he ruled those records were therefore exempt from disclosure under RCW 42.56.240(1).[1] *Id.*

By letter dated March 31, 2008, the City of Puyallup notified petitioners that an individual named Tristan Baurick requested disclosure of Puyallup's records relating to its criminal investigation of Ms. Koenig's allegations. The City of Puyallup stated that it disagreed with the City of Bainbridge Island's interpretation of the criminal investigation file as "non-conviction data," and it intended to provide Mr. Baurick a copy of those materials absent a court order prohibiting such distribution. Some time after Judge Hartman's decision, Ms. Koenig and Mr. Koss requested Puyallup's

[1] Judge Harman's ruling preceded this Court's decision in *Bellevue John Does*, issued on July 31, 2008. *Bellevue John Does*, 164 Wn.2d 199.

criminal investigation file directly from the City of Puyallup as well. At no time did the Bainbridge Island Police Guild or Officer Cain release, or authorize the release of, any of the police investigation materials relating to Ms. Koenig's complaint against Officer Cain. (CP 385-88.)

On July 18, 2008, the Bainbridge Island Police Guild and Officer Cain filed an *ex parte* motion for a temporary injunction requesting that the Pierce County Superior Court enjoin the City of Puyallup from disclosing the requested records until the petitioners could file a motion for injunctive relief on the Judge's calendar and litigate the issue on the merits. (CP 46-50.) The Commissioner allowed Puyallup to disclose the records to Ms. Koenig and Mr. Koss, but ordered that they not disseminate those records in any way pending a full motion on the merits. (CP 51-52.)

Accordingly, the Bainbridge Island Police Guild and Officer Cain filed a motion for permanent injunctive relief in the Pierce County Superior Court. (CP 53-100.) Judge John Hickman reviewed the requested materials *in camera* and heard oral argument on September 19, 2008. (CP 254 and 259.) On October 3, 2008, he entered his written decision.[2] (CP 254-60.) In that decision, he found that disclosure of the requested materials, even with Officer Cain's name redacted, would violate Officer Cain's right to privacy.

[2] Judge Hickman had the benefit of this Court July 31, 2008 decision in *Bellevue John Does*, 164 Wn.2d 199.

(*Id.*) Therefore, he exempted the records from disclosure under the Public Records Act. (*Id.*) Judge Hickman entered the order granting petitioners' motion for injunctive relief on October 17, 2008. (CP 267-270.) Ms. Koenig and Mr. Koss filed their notice to appeal Judge Hickman's decision on October 31, 2008. (CP 271-88.)

III. STATEMENT OF THE ISSUES

1. Did the Pierce County Superior Court properly enjoin the City of Puyallup from disclosing the criminal investigation materials relating to Officer Cain, when disclosure would violate Officer Cain's privacy rights protected under RCW 42.56.240(1) and RCW 42.56.050?

2. If the Court finds that the criminal investigation materials are not exempt from disclosure, should this Court enjoin the City of Puyallup from disseminating copies of the criminal investigation materials, when these documents constitute non-conviction data under RCW 10.97.80?

IV. ARGUMENT

A. Washington's Public Records Act.

Washington's Public Records Act governs the disclosure of public records possessed by public agencies. RCW 42.56.070.[3] A person may

[3] On July 1, 2006, the legislature recodified the previous public records act, RCW 42.17, as RCW 42.56. RCW 42.56.001.

receive a copy of requested public records unless an exemption to disclosure applies. *Id.* Exemptions are narrowly construed. *Brouillet v. Cowles Pub'g Co.*, 114 Wn.2d 788, 793, 791 P.2d 526 (1990).

If an agency intends to disclose public records pursuant to the Public Records Act, an interested third party may object and seek judicial intervention to prevent disclosure. RCW 42.56.540; *Burt v. Wash State Dept. Corr.*, 141 Wn. App. 573, 579-80, 170 P.3d 608 (2007). The party seeking to prevent disclosure has the burden to prove that the public records are exempt from disclosure. *Id.* at 579-80.

Specific investigative records compiled by law enforcement agencies are exempt from disclosure if nondisclosure is "essential to effective law enforcement or for the protection of any person's right to privacy." RCW 42.56.240(1) (attached as Appendix A). The requested internal investigation materials in this case meet the first two requirements of this exemption; they are specific investigative records compiled by a law enforcement agency. *Cowles Pub'g Co. v. The State Patrol*, 109 Wn.2d 712, 748 P.2d 597 (1988). Additionally, as set forth below, nondisclosure is necessary to protect Officer Cain's right to privacy.[4]

[4] The Bainbridge Island Police Guild and Officer Cain have consistently argued the requested investigation materials are exempt under RCW 42.56.240(1), because they related to specific investigative records compiled by law enforcement agencies. Judge Hickman's written decision, filed in the Pierce County Superior Court, instead analyzes exemption under RCW 42.56.230(2) (attached as Appendix C), as related to personal

B. The Requested Internal Investigation Materials are Exempt from Disclosure Because Nondisclosure is Essential for the Protection of Officer Cain's Right to Privacy.

A person's right to privacy is invaded or violated only if disclosure "(1) would be highly offensive to a reasonably person, and (2) is not of legitimate concern to the public." RCW 42.56.050 (attached as Appendix B). The court does not balance a person's privacy interest against the need for public accountability; the statute requires the party opposing disclosure to show the requested information is both highly offensive and not of legitimate public interest. *Brouillet*, 114 Wn.2d at 798. In this case, both criteria are met.

1. The Requested Materials Are Highly Offensive to a Reasonable Person.

The Public Records Act does not define "privacy" or information "highly offensive to a reasonable person." Therefore, the Court concluded that the Legislature intended the right of privacy to mean what it meant at common law. *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 135, 580 P.2d 246 (1978). It quoted the Restatement (Second) of Torts, which provides:

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information of public officials. (CP 257.) RCW 42.56.230(2) exempts from disclosure any "[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy." However, there is no material distinction between the two statutes in this case. The undisputed issue under either statute is whether disclosure of the requested materials would violate Officer Cain's right to privacy. The outcome is driven by the application of RCW 42.56.050, as detailed in this brief.

> Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget.

Id., at 136. The Court has since adopted the language of the Restatement (Second) Torts as the controlling definition of the right to privacy under the Public Records Act. *Cowles Publ'g Co.*, 109 Wn.2d at 720-21. The Court later explained that the right to privacy protects personal information that an individual "would not normally share with strangers." *Dawson v. Daly*, 120 Wn.2d 782, 796, 845 P.2d 995 (1993).

The information contained in Puyallup's criminal investigation materials is highly offensive to a reasonable person, because it involves the investigation into unsubstantiated allegations of sexual misconduct of a police officer. Public knowledge of the details of the criminal investigation into Ms. Koenig's complaint would embarrass Officer Cain and threaten his reputation, therefore impacting his effectiveness as a police officer. Further, the subject nature of the investigation is exactly the type of thing the Restatement (Second) of Torts intends to protect as

private: alleged sexual conduct. Moreover, the Kitsap County prosecutor did not find sufficient evidence to establish that Officer Cain's behavior was in any way inappropriate. The unsubstantiated disposition, coupled with the offensiveness and embarrassing result of disclosure, demonstrates that this is the type of private information protected under the law. Put simply, this is the type of information any reasonable person would attempt to keep out of the public eye.

Judge Hartman agreed with this analysis. In his oral opinion, he states:

> First [petitioners] have to show that what is in the report would be highly offensive to a reasonable person. And I think that as to what is alleged by the victim, what the victim had to say about the conduct of the arresting officer, the answer to that question is clearly yes. ... So I think that the Police Guild has met the first element of the privacy test.

(CP 84-85.)

While Judge Hartman's decision was not binding on Judge Hickman, it was persuasive, especially because Judge Hartman fully reviewed the criminal investigation file before issuing his opinion. The information in the criminal investigation materials is highly offense to a reasonable person and therefore meets the first prong of the privacy exemption under the Public Records Act.

This Court's recent decision in *Bellevue John Does 1-11 v. Bellevue School Dist. No. 405*, 164 Wn.2d 199, 189 P.3d 139 (2008), supports this conclusion. In that case, the Court held that the identity of a teacher accused of sexual misconduct is highly offensive to a reasonable person. *Id.* at 216. It reasoned in part that "[a]n unsubstantiated or false accusation of sexual misconduct is not an action taken by an employee in the course of performing public duties," and therefore teachers have a right to privacy in their identities. *Bellevue John Does*, 164 Wn.2d at 215. Further,

> [t]he mere fact of the allegation of sexual-misconduct toward a minor may hold the teacher up to hatred and ridicule in the community, without any evidence that such misconduct ever occurred. The fact that a teacher is accused of sexual misconduct is a matter concerning the private life within the Hearst definition of the scope of the right to privacy.

Id. (internal citations omitted). Similarly, although police officers are public officials, they have protected privacy rights, and disclosure of information relating to an unsubstantiated allegation of sexual misconduct against them is highly offensive to a reasonable person.

2. The Requested Materials Are Not of Legitimate Concern to the Public.

The public does not have a legitimate concern in the identities of

public officials who are the subject of unsubstantiated allegations of sexual misconduct. *Bellevue John Does*, 164 Wn.2d at 221; *see also Morgan v. City of Federal Way*, 2009 Wn. LEXIS 734 (August 20, 2009) (attached as appendix F). The *Bellevue John Does* case was the first time the Supreme Court definitively ruled on this issue. In doing so, it relied on the analysis from a division two case, *City of Tacoma v. Tacoma News*, Inc., 65 Wn. App. 140, 827 P.2d 1094 (1992, Division 2), *review denied*, 119 Wn.2d 1020, 838 P.2d 692 (1992). *Bellevue John Does*, 164 Wn.2d at 217.

In *Tacoma News*, the Morning News Tribune sought access to a police incident report and related materials pursuant to the Public Disclosure Act. *Id.* at 142. The police incident report concerned a citizen allegation that a parent had criminally abused a dependent minor. *Id.* at 143. The allegation was investigated by several agencies, and each agency found the allegation "unsubstantiated." *Id.* The Tribune believed the incident was related to a candidate for mayor and raised the possibility that the police may not have conducted a full and fair investigation. *Id.* The City did not disclose the incident report on the basis that it violated individual privacy rights. *Id.*

Because the Legislature intended privacy under the Public Records Act to mean what it meant at common law, the *Tacoma News* court

considered the privacy rights described in the Restatement (Second) of Torts. *Tacoma News*, 64 Wn. App. at 147-49, *citing Hearst Corp. v. Hoppe*, 90 Wn.2d at 135. It held that the common law allows public agencies to consider if information in public records is true or false when determining whether the records are of legitimate public concern within the meaning of the Public Records Act. *Id.*, at 149.

The *Tacoma News* court further held that, because agencies can consider whether information in requested public records is true or false, agencies can also consider whether such information has been substantiated. *Tacoma News*, 65 Wn. App. at 149. "If information remains unsubstantiated after reasonable efforts to investigate it, that fact is indicative though not always dispositive of falsity." *Id.*

Ultimately, the *Tacoma News* court upheld the trial court's finding that the police incident report was not of legitimate public concern and was therefore exempt from disclosure. *Tacoma News*, 65 Wn. App. at 151-52. The court based its ruling on the fact that three separate agencies investigated the allegation and all found it to be unsubstantiated. *Id.* at 151-52. Similarly, as noted by Judge Hartman, the allegations against Officer Cain have been found unsubstantiated, and are therefore not of legitimate concern to the public. (CP 87.) Therefore, this Court should rule that the requested criminal investigation materials are not of

legitimate public concern, and are exempt from disclosure under RCW 42.56.040.

The *Bellevue John Does* decision also overruled the holding in *Bellevue John Does 1-11 v. Bellevue School District # 405*, 129 Wn. App. 832, 120 P.3d 616 (Div. I 2005), upon which appellants previously relied. The appellate court reasoned the public has a legitimate public concern in the identities of public officials who are the subject of unsubstantiated allegations, because "unsubstantiated" only means that an investigator was unable to reach a firm conclusion about what really happened, and there is a possibility the conduct actually occurred. *Id.* at 856. It held that only patently false claims are not of legitimate public concern. *Id.* at 858. This court, however, found that making a distinction between unsubstantiated and patently false allegations is "vague and impractical." *Bellevue John Does*, 164 Wn.2d at 218. "Placing the burden on agencies and courts to determine whether allegations are patently false rather than simply unsubstantiated is unworkable, time consuming, and, absent specific rules and guidelines, likely to lead to radically different methods and conclusions." *Id.* When an allegation is unsubstantiated, the identity of the public official is not of legitimate public concern. *Id.* at 221.

Moreover, *Bellevue John Does* clearly held that the issue of whether an investigation was adequate does not justify disclosure.

Bellevue John Does, 164 Wn.2d at 221-22. Such a rule

> fails to adequately protect teachers' privacy rights and incorrectly presumes that the presence of an allegation is indicative of increased likelihood of misconduct. Whether or not there was an adequate investigation should not, as a policy matter, determine the accused's right to privacy because the accused has no control over the adequacy of the investigation.

Id. at 221. If Ms. Koenig and Mr. Koss were truly concerned about the overall adequacy of criminal investigations into police sexual misconduct, they would have requested more than just the investigation into Officer Cain's conduct. They would have at least requested materials relating to other alleged police sexual misconduct. Under *Bellevue John Does*, Officer Cain has a recognized right to privacy in this matter, which will necessarily be violated if the City of Puyallup discloses the requested records.

3. Disclosure of the Requested Records Will Violate Officer Cain's Privacy Rights, Regardless of Whether his Name is Redacted.

Absent full disclosure, Ms. Koenig and Mr. Koss request disclosure of the criminal investigation file with Officer Cain's name redacted, the same way the teachers' names were redacted in the records requested in the *Bellevue John Does* case. However, the *Bellevue John Does* decision does not support such a request. The school districts in the

Bellevue John Does case had voluntarily provided the entire set of requested records, with only teachers' names and identifying information redacted. *Bellevue John Does*, 164 Wn.2d at 217, n. 19. The issue in front of the Court was whether the names of the unidentified public school teachers subject to unsubstantiated allegations of sexual misconduct were exempt from disclosure. *Id.* at 208.

Furthermore, redacting the teachers' names from the requested records in *Bellevue John Does* made sense; because so many records were requested, the identities of the teachers would remain protected. This is not true in the present case. Respondents requested the internal investigation file related to *Officer Cain's* conduct. Redacting his name and disclosing the records does no more than present a fill-in-the-blanks exercise for respondents and necessarily publicizes the identity of Officer Cain.

In short, the *Bellevue John Does* Court did not consider whether disclosure of an entire set of records would violate privacy rights protected under RCW 42.56.050, even if the names of the teachers with unsubstantiated allegations of sexual misconduct were redacted. *Bellevue John Does*, 164 Wn.2d at 217, n. 19. However, the *Tacoma News* court did. *Tacoma News*, Inc., 65 Wn. App. at 151-52. In that case, the court held that an entire set of documents was exempt from disclosure under the

Public Disclosure Act, because the allegations were unsubstantiated, and disclosure would violate the privacy rights of the people involved.[5] *Id.* at 143; 151. The *Tacoma News* court considered and denied the newspaper's request for a copy of the records with the names of the alleged victim and informant redacted. *Id.* at 152. It reasoned: "First, whatever information was not redacted would continue to be unsubstantiated and not of legitimate concern to the public. Second, identification of [one individual] would inevitably lead to the identification of others allegedly involved." *Id.* at 152-53.

Similarly, the criminal allegations against Officer Cain were unsubstantiated, and therefore no portion of the investigation materials are of legitimate public concern. Because his involvement in this incident is known to the public, disclosing the records with his name redacted is a hollow exercise that does nothing to protect his identity or his right to privacy.

4. Officer Cain's Privacy Rights Are Not Diminished by Any Level of Public Disclosure.

Ms. Koenig and Mr. Koss assert, without citing to any supporting authority, that because various media outlets have revealed Officer Cain's identity, he no longer has a protected right to privacy. They suggest that

[5] The *Tacoma News* court analyzed whether disclosure would violate privacy rights under former RCW 42.17.310(1)(d), which is substantively identical to current RCW 42.56.240(1).

because Ms. Paulson and other journalists chose to drag Officer Cain's name through the mud, he is no longer afforded protection under the law. Respondents offer no case law to support their bizarre contention. Their supposition that this Court's decision in the *Bellevue John Does* case turns on the fact that the identities of the teachers were unknown to the public in meritless. This Court's analysis in *Bellevue John Does* surrounds the privacy exception to the Public Records Act, 42.56.050, a statute the appellants' noticeably failed to cite anywhere in their opening brief.

RCW 42.56.050 protects a person's right to privacy if disclosure of records would be highly offensive to a reasonable person and is not of legitimate public concern. The level of public discourse surrounding the materials is completely immaterial to these elements. That is particularly true here, where Officer Cain, the victim of these disclosures, had no involvement in seeking media attention or promoting his side of the story publicly. He had been consistent in his effort to preserve his right of privacy. Media obsession over Ms. Koenig's complaint does not strip Officer Cain of his legal right to privacy, and the Court should enjoin any further disclosure of these investigative materials by affirming the trial court's order.

5. Officer Cain Has Not Waived His Right to Privacy.

Ms. Koenig and Mr. Koss also assert that Officer Cain waived his

right to privacy, because he did not immediately obtain a court order preventing the City of Puyallup from disclosing its criminal investigation file, and media outlets have since reported about the contents of those materials. This argument is baseless. A person's right to privacy does not hinge on his or her ability to fully understand the law and seek immediate and costly legal representation to prevent disclosure or distribution of private information. Waiver requires an individual to intentionally relinquish or abandon a known right. *City of Seattle v. Klein*, 161 Wn.2d 554, 559, 116 P.3d 1149 (2007). At no time did Officer Cain intentionally relinquish or abandon his right to privacy. (CP 385-88.) Quite the contrary, he has been consistent in his battle to preserve his right in the fact of multiple legal challenges.

Columbia Publ'g. Co. v. City of Vancouver, 36 Wn. App. 25, 671 P.2d 280 (1983), is not on point. In that case, the local police union met and voted no confidence in the chief of police. *Id.* at 282. The union immediately issued a press release expressing concerns, and it gave copies of the press release to the city manager and provided him with 13 statements of individual officers detailing specific complaints. *Id.* The statements were confidential, but the city manager was given a key to identify the writers and conduct follow-up interviews. *Id.* A reporter at the Columbian submitted a public records request for copies of the 13

complaints, and the court ultimately permitted disclosure. *Id.* at 282-83.

The *Columbia Publ'g. Co.* court held that the privacy exemption in the Public Records Act did not apply, because the contents of the complaints were not highly offensive, and they related to a matter of public concern: the police chief's job performance. *Columbia Publ'g. Co.*, 36 Wn. App. at 283-84. Further, the court held that the police union waived any claim to privacy by its individual members by choosing to "go public" with its complaints. *Id.* at 284. Neither the Bainbridge Island Police Guild nor Officer Cain "went public" with any of the information contained in the Puyallup criminal investigation file. Further, disclosure would violate Officer Cain's right to privacy, something even a police officer has the right to preserve.

Ames v. City of Fircrest, 71 Wn. App. 284, 857 P.2d 1083 (1993), is also inapplicable. There, the court held that Mr. Ames was unable to demonstrate that nondisclosure of requested materials was essential to effective law enforcement, and therefore he could not show an exemption to the Public Records Act applied. *Id.* at 294. The court did not consider a privacy exemption, nor did it consider whether Mr. Ames waived his right to privacy. *Id.* at 296. Officer Cain has not waived his right to privacy, and therefore the Court should uphold the trial court's order and enjoin the City of Puyallup from disclosing the requested criminal

investigation materials to Ms. Koenig, Mr. Koss, or any other member of the public.

C. Disclosure Is Not in the Public Interest and Would Irreparably Violate Officer Cain's Right to Privacy.

In order to enjoin the release of public records, the trial court must find that a specific exemption under the Public Records Act applies *and* that disclosure would not be in the public interest and would substantially and irreparably damage a person or a vital government function. RCW 42.56.540; *Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 757, 174 P.3d 60 (2007). Here, the requested records are exempt from disclosure under 42.56.240(1). The Court may enjoin their release, because disclosure is not in the public interest and would substantially and irreparably damage Officer Cain's right to privacy.

This Court has clearly held that the public does not have a legitimate concern in the identities of public officials who are the subject of unsubstantiated allegations of sexual misconduct. *Bellevue John Does*, 164 Wn.2d at 221. Therefore, disclosure of the criminal investigation materials is not in the public interest. Additionally, disclosure would substantially and irreparably damage Officer Cain's right to privacy. While the City of Puyallup previously released the criminal investigation materials, Officer Cain has since invoked his right to privacy and taken

every effort to prevent further dissemination of these highly offensive materials. Given the immense amount of media coverage Ms. Koenig's complaint previously generated, it is likely that disclosure of the materials will initiate additional media attention and further violate Officer Cain's right to keep these matters private.

The Legislature expressly protected Officer Cain's right to privacy when it enacted RCW 42.56.240 and RCW 42.56.050. Disclosure of the requested records in this case will violate that right and circumvent the legislative intent behind the Public Records Act. Because further dissemination of these records is not in the public interest and would substantially and irreparably violate Officer Cain's right to privacy, the Bainbridge Island Police Guild and Officer Cain respectfully request that this Court uphold the trial court's decision and rule that the criminal investigation materials are exempt from disclosure.

D. The Requested Criminal Investigation Materials Are Exempt from Dissemination Under RCW 10.97.080.

Should this Court finds the criminal investigation materials are disclosable under the Public Records Act, their dissemination is still exempt under Washington's Criminal Records Privacy Act, RCW 10.97, *et seq.* RCW 10.97.080 states:

> No person shall be allowed to retain or mechanically reproduce any nonconviction

> data except for the purpose of challenge or correction when the person who is the subject of the records asserts the belief in writing that the information regarding such person is inaccurate or incomplete. ***The provisions of chapter 42.56 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.***

RCW 10.97.080 (emphasis added) (attached as Appendix D). *See also, Hudgens v. City of Renton*, 49 Wn. App. 842, 844, 746 P.2d 320 (1987), (RCW 10.97 precludes the copying or retaining of nonconviction information, and exempts such information from the disclosure requirements of the Public Records Act.). "'Non conviction data' consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending." RCW 10.97.030(2) (attached as Appendix E). Further, an "individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter." RCW 10.97.080.

"Criminal record history information" means

> information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of

> identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

RCW 10.97.030(1) (attached as Appendix E). The term includes "information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender." *Id.*

Because both the Kitsap County Superior Court and the Pierce County Superior Court ruled that the criminal investigation materials are exempt from disclosure under RCW 42.56.240(1), neither reached the issue whether those materials constitute non-conviction data. In the event this Court holds the requested criminal investigation materials are somehow disclosable under the Public Records Act, they still constitute non-conviction data, because they relate to criminal allegations against Officer Cain that did not lead to a conviction or other disposition adverse to him. RCW 10.97.080 prohibits the City of Puyallup from providing copies or otherwise disseminating the records to Ms. Koenig, Mr. Koss, or

any other party.

V. CONCLUSION

The Legislature specifically created an exemption to the Public Records Act when nondisclosure of documents is essential for the protection of an individual's privacy rights. While appellants make a variety of arguments in attempt to get around this firmly established exemption, the law is clear. A person's right to privacy is invaded or violated when disclosure would be highly offensive to a reasonably person, and when disclosure is not of legitimate concern to the public.

Here, Ms. Koenig and Mr. Koss do not dispute that the content of the Puyallup criminal investigation file is highly offensive to a reasonable person, or that the content of the requested materials is not of legitimate concern to the public. Instead, they argue that because the media identified Officer Cain's involvement in the underlying incident, and because Officer Cain did not seek injunctive relief soon enough, somehow Officer Cain's right to privacy is no longer protected. Appellants' arguments are unsupported by legal authority, fail to address the statutory law applicable to this issue, and unjustly attempt to strip Officer Cain of his protected rights.

Disclosure of the requested materials would violate Officer Cain's right to privacy. The Bainbridge Island Police Guild and Officer Cain

respectfully request that this Court establish the clear bright line and uphold the trial court's order and enjoin the City of Puyallup from disclosing the requested materials to Ms. Koenig, Mr. Koss, or any other member of the public.

Even if the event the Court finds disclosure appropriate under the Public Records Act, petitioners request that this Court prohibit the City of Puyallup from providing copies or otherwise disseminating the requested records to Ms. Koenig, Mr. Koss, or any other party, because they constitute non-conviction data.

Respectfully submitted this 27th day of August, 2009.

CHRISTIE LAW GROUP, PLLC

By _____
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CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2009, I caused BRIEF OF RESPONDENTS BAINBRIDGE ISLAND POLICE GUILD and STEVEN CAIN to be filed with the Clerk of the Court via e-mail and delivered to the following in the manner described:

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Attorney for Respondent City of Puyallup

DATED this 27th day of August, 2009.

Maureen E. Pattsner
MAUREEN E. PATTSNER

APPENDIX

RCW 42.56.240(1)

Investigative, Law Enforcement and Crime Victims. The following investigative, law enforcement and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the non-disclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

APPENDIX A

RCW 42.56.050(2)

Invasion of Privacy, When.

A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records.

APPENDIX B

RCW 42.56.230(2)

Personal Information.

The following personal information is exempt from public inspection and copying under this chapter:

...

(2) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

APPENDIX C

RCW 10.97.080

Inspection of information by subject — Challenges and corrections.

All criminal justice agencies shall permit an individual who is, or who believes that he may be, the subject of a criminal record maintained by that agency, to appear in person during normal business hours of that criminal justice agency and request to see the criminal history record information held by that agency pertaining to the individual. The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigative, or other related files, and shall not be construed to include any information other than that defined as criminal history record information by this chapter.

Every criminal justice agency shall adopt rules and make available forms to facilitate the inspection and review of criminal history record information by the subjects thereof, which rules may include requirements for identification, the establishment of reasonable periods of time to be allowed an individual to examine the

record, and for assistance by an individual's counsel, interpreter, or other appropriate persons.

No person shall be allowed to retain or mechanically reproduce any nonconviction data except for the purpose of challenge or correction when the person who is the subject of the record asserts the belief in writing that the information regarding such person is inaccurate or incomplete. The provisions of chapter 42.56 RCW shall not be construed to require or authorize copying of nonconviction data for any other purpose.

The Washington state patrol shall establish rules for the challenge of records which an individual declares to be inaccurate or incomplete, and for the resolution of any disputes between individuals and criminal justice agencies pertaining to the accuracy and completeness of criminal history record information. The Washington state patrol shall also adopt rules for the correction of criminal history record information and the dissemination of corrected information to agencies and persons to whom inaccurate or incomplete information was previously disseminated. Such rules may establish time

limitations of not less than ninety days upon the requirement for disseminating corrected information.

APPENDIX D

RCW 10.97.030(1) & (2)

Definitions.

For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals, consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(b) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, charge, or service of warrant and no disposition has been entered.

APPENDIX E

APPENDIX F

1 of 1 DOCUMENT

MICHAEL F. MORGAN, *Appellant*, v. THE CITY OF FEDERAL WAY ET AL., *Respondents*.

No. 81556-9

SUPREME COURT OF WASHINGTON

2009 Wash. LEXIS 734

August 20, 2009, Filed

PRIOR HISTORY: Appeal from King County Superior Court. 08-2-08081-1. Honorable Kimberley Prochnau.

JUDGES: [*1] Justice Susan Owens. Chief Justice Gerry L. Alexander, Justice Charles W. Johnson, Justice Tom Chambers, Justice Mary E. Fairhurst, Justice James M. Johnson, Justice Debra L. Stephens, Joel M. Penoyar, Justice Pro Tem., Kevin M. Korsmo, Justice Pro Tem.

OPINION BY: Justice Susan Owens

OPINION

En Banc

∂1 OWENS, J. -- In response to a public records request from the *News Tribune*, the city of Federal Way (City) agreed to release a report on the investigation of a Federal Way Municipal Court employee's hostile work environment complaint. Presiding Judge Michael Morgan filed for a protective order to prevent the release, claiming that the report was exempt from the Public Records Act (PRA), chapter 42.56 RCW. We disagree. Because the report was initiated by the city attorney in accordance with city policy and completed without Judge Morgan's permission, it is a city document subject to disclosure under the PRA. Judge Morgan did not have an attorney-client relationship with the outside investigator, and the report was not prepared in anticipation of litigation, so the PRA exemptions cited by Judge Morgan do not apply. We affirm the trial court's decision to allow the City to release the report. [1]

1 Earlier, the court [*2] unanimously ordered the immediate release of the report at issue in this case indicating an opinion would follow setting forth the court's reasoning. This is that opinion.

FACTS

∂2 A Federal Way Municipal Court employee complained of a hostile work environment to the City. Per the City's antidiscrimination policy, City Attorney Patricia Richardson initiated an investigation. Richardson contacted Judge Morgan to inform him, in general terms, of the complaint and investigation. Richardson also sought Judge Morgan's cooperation because he had prohibited court employees from cooperating in a prior investigation into accusations against him. Richardson hired attorney Amy Stephson to conduct a factual investigation of the complaint. After meeting with Stephson, Judge Morgan attempted to terminate her investigation. Richardson instructed Stephson to complete a report on her investigation anyway. Later that month, Judge Morgan wrote an e-mail to Richardson complaining that Stephson's investigation was creating a hostile work environment for him. Clerk's Papers (CP) at 215-17 (SEALED). He then forwarded that e-mail message to the private e-mail address of one of the city council members (Document [*3] 10). *Id.* at 215.

∂3 The News Tribune requested a copy of the "Stephson Report," and the City agreed to produce it. Judge Morgan filed a motion to prevent the release. The trial court granted a temporary restraining order (TRO) preventing the City from releasing the report but ultimately denied Judge Morgan's motion and dissolved the TRO. Judge Morgan appealed to Division One of the Court of Appeals and that appeal was transferred to this court.

ISSUES

1. Is the Stephson Report a city record subject to the PRA?

2. Is the Stephson Report protected under the work product doctrine, attorney-client privilege, or personal information exemptions?

3. Does attorney-client privilege apply to Judge Morgan's e-mail to the city attorney after he sent it to a third party (Document 10)?

4. Did the trial court abuse its discretion when it denied attorney fees after an injunction was wrongfully issued?

STANDARD OF REVIEW

∂4 When the record before the trial court consists entirely of "documentary evidence, affidavits and memoranda of law," this court stands in the same position as the trial court and reviews the trial court's decision de novo. *Limstrom v. Ladenburg, 136 Wn.2d 595, 612, 963 P.2d 869 (1998)*. The PRA [*4] must be "liberally construed and its exemptions narrowly construed" to ensure that the public's interest is protected. *RCW 42.56.030*; *Livingston v. Cedeno, 164 Wn.2d 46, 50, 186 P.3d 1055 (2008)*.

ANALYSIS

I. The PRA

∂5 A "'[p]ublic record' includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." *RCW 42.56.010(2)*. At all stages, the Stephson Report appeared to be a city record. The initial complaint was made to the City, not to Judge Morgan. The city attorney initiated the investigation in accordance with the City's antidiscrimination policy, not as a result of instruction from Judge Morgan, and continued it over Judge Morgan's protests. [2] As a whole, the record indicates that the Stephson Report was prepared, owned, used, and retained by the City; thus it qualifies as a public record and is subject to disclosure under the PRA.

2 Judge Morgan insists that the City's investigation conflicts with *GR 29(f)*, which charges presiding judges with overseeing court employees, including their working conditions. [*5] Even if the investigation did conflict, we must base our ruling on what actually happened, not what he argues "should have happened." *See Soter v. Cowles Publ'g Co., 131 Wn. App. 882, 897-98, 130 P.3d 840 (2006), aff'd, 162 Wn.2d 716, 174 P.3d 60 (2007)*.

II. Work Product Doctrine, Attorney-Client Privilege, and Personal Information Exemptions

∂6 Judge Morgan contends that the Stephson Report is protected from release under the PRA's work product, attorney-client privilege, and personal information exemptions. *RCW 42.56.290, .230(2)*. The PRA exempts any records related to a "controversy" that would be protected from pretrial discovery. *RCW 42.56.290*. This includes attorney work product, *CR 26(b)(4)*, and records protected by attorney-client privilege, *CR 26(b)(1)*. *Soter v. Cowles Publ'g Co., 162 Wn.2d 716, 730-32, 174 P.3d 60 (2007)*. The PRA also exempts records containing personal employee information when disclosure would violate the employee's right to privacy. *RCW 42.56.230(2)*.

A. Work Product Doctrine

∂7 To invoke the work product exemption, the records must relate to "'completed, existing, or reasonably anticipated litigation.'" *Soter, 162 Wn.2d at 732* (quoting *Dawson v. Daly, 120 Wn.2d 782, 791, 845 P.2d 995 (1993)*). [*6] The work product doctrine does not shield records created during the ordinary course of business. *Heidebrink v. Moriwaki, 104 Wn.2d 392, 396-97, 706 P.2d 212 (1985)*; *see Payton v. N.J. Tpk. Auth., 148 N.J. 524, 554-55, 691 A.2d 321 (1997)* (holding that an investigation into a hostile work environment claim was likely not work product because it was conducted during the ordinary course of business, not in anticipation of litigation).

∂8 At the time of the Stephson investigation, no one had threatened litigation related to the hostile work environment and none was reasonably anticipated. The City's antiharassment policy calls for an investigation into any harassment claim and prompt remedial action. The Stephson investigation was conducted per this antiharassment policy and had a remedial purpose. Therefore, we hold that the Stephson Report was not prepared in reasonable anticipation of litigation and is not protected by the work product doctrine.

B. Attorney-Client Privilege

∂9 The attorney-client privilege protects "'communications and advice between attorney and client.'" *Hangartner v. City of Seattle, 151 Wn.2d 439, 452, 90 P.3d 26 (2004)* (quoting *Kammerer v. W. Gear Corp., 96 Wn.2d 416, 421, 635 P.2d 708 (1981)*); [*7] *RCW 5.60.060(2)(a)*. This privilege "does not protect documents that are prepared for some other purpose than

communicating with an attorney." *Hangartner, 151 Wn.2d at 452.*

∂10 The evidence does not support Judge Morgan's contention that the Stephson Report is protected by attorney-client privilege because no attorney-client relationship developed between Judge Morgan and Stephson. Stephson was hired as an independent investigator, and Judge Morgan referred to her as "the investigator" and not as his attorney. Transcript of Proceedings (TR) (Mar. 10, 2008) at 12. In fact, he complained when she offered "unsolicited advice" and he perceived her actions to exceed those appropriate for an investigator. CP at 71; TR (Mar. 10, 2008) at 10. Moreover, the purpose of her investigation was not to provide legal advice, but to comply with the City's antidiscrimination policy. Her report consists solely of a factual investigation and contains no legal analysis or recommendations. Because no attorney-client relationship developed between Stephson and Judge Morgan, the investigation and report are not protected by attorney-client privilege.

C. Personal Information Exemption

∂11 The PRA exempts "[p]ersonal information [*8] in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy." *RCW 42.56.230(2).* The right to privacy extends to matters concerning a person's private life that "(1) [w]ould be highly offensive to a reasonable person, and (2) "[are] not of legitimate concern to the public." *RCW 42.56.050; Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405, 164 Wn.2d 199, 212, 189 P.3d 139 (2008).* Unsubstantiated allegations are exempt from disclosure. *Does, 164 Wn.2d at 215-16* (holding that teachers had a right to privacy in unsubstantiated allegations of sexual misconduct toward a minor).

∂12 Judge Morgan claims that the report violates his right to privacy because it contains unsubstantiated allegations of "inappropriate behavior," which he contends are highly offensive. However, the allegations--including angry outbursts, inappropriate gender-based and sexual comments, and demeaning colleagues and employees--are nowhere near as offensive as allegations of sexual misconduct with a minor and do not rise to the level of "highly offensive." *Cf. id.* Contrary to Judge Morgan's assertion, the incidents are not [*9] unsubstantiated simply because he disputes them. The Stephson Report evaluates each person's credibility and concludes that many of the allegations are likely true, unlike in *Does*, where the allegations were found to be unsubstantiated. *Id. at 217.* Judge Morgan also fails to demonstrate how his behavior in the workplace is not of legitimate concern to the public and the voters.

∂13 If one of the PRA's exemptions applies, a court can enjoin the release of a public record only if disclosure "would clearly not be in the public interest and would substantially and irreparably damage any person, or ... vital governmental functions." *RCW 42.56.540; Soter, 162 Wn.2d at 757.* Because we find that none of the PRA's exemptions apply, we need not consider this issue. However, we note that the public interest in disclosing the report is substantial. As an elected official, Judge Morgan is accountable to the voters and the voters are entitled to information regarding his job performance. Even if the Stephson Report qualified for one of the exemptions, Judge Morgan has not shown that disclosure "would clearly not be in the public interest." To the contrary, the public has a substantial interest in disclosure [*10] of information related to an elected official's job performance.

III. Attorney-Client Privilege and Document 10

∂14 To qualify for attorney-client privilege, a communication must be made in confidence. *Dietz v. John Doe, 131 Wn.2d 835, 849, 935 P.2d 611 (1997).* The presence of a third person during the communication waives the privilege, unless the third person is necessary for the communication, *State v. Martin, 137 Wn.2d 774, 787, 975 P.2d 1020 (1999)*, or has retained the attorney on a matter of "common interest," *Broyles v. Thurston County, 147 Wn. App. 409, 442, 195 P.3d 985 (2008).* Judge Morgan contends that attorney-client privilege applies to an e-mail he sent to the city attorney even though he later forwarded it to a city council member (Document 10). However, Judge Morgan has not demonstrated how his e-mail to the city council member implicated any common legal interest. *See Reed v. Baxter, 134 F.3d 351, 357-58 (6th Cir. 1998)* (holding that the fire chief waived attorney-client privilege when two city council members were present at a meeting with the city attorney because the council members were not acting as clients of the city attorney). Therefore, Judge Morgan waived attorney-client [*11] privilege when he forwarded his e-mail to a third party.

IV. Denial of Attorney Fees

∂15 At its discretion, the trial court may award attorney fees to a party who prevails in dissolving a wrongfully issued TRO. *Confederated Tribes of Chehalis Reservation v. Johnson, 135 Wn.2d 734, 758, 958 P.2d 260 (1998).* A trial court has abused its discretion if its decision is manifestly unreasonable or based on untenable grounds. *State v. Mason, 160 Wn.2d 910, 922, 162 P.3d 396 (2007), cert. denied, 128 S. Ct. 2430 (2008).*

∂16 Here, the trial court held that it had discretion to award attorney fees, but it declined to do so because filing for a TRO was necessary to preserve Judge Morgan's

rights. This aligns with our holding in *Confederated Tribes* that TROs are generally reasonable when a party seeks to prevent the disclosure of public records because they are often the only way to preserve a party's right prior to trial, but that attorney fees may still be awarded at the trial court's discretion. *Confederated Tribes, 135 Wn.2d at 758*. Although Judge Morgan failed to give the City proper notice, the City has not shown that it was prejudiced by the failure to give notice. While Judge Morgan's failure to give [*12] notice might have been sufficient to justify awarding attorney fees, it does not mandate it. The trial court's decision was not an abuse of discretion and should be upheld.

CONCLUSION

∂17 We affirm the trial court's decision to allow the City to release the documents because they are public records and not exempt from disclosure under the PRA.

ALEXANDER, C.J.; C. JOHNSON, CHAMBERS, FAIRHURST, J.M. JOHNSON, and STEPHENS, JJ.; and PENOYAR and KORSMO, JJ. PRO TEM., concur.

OFFICE RECEPTIONIST, CLERK

To: Maureen Pattsner
Cc: jrmuenster@muensterkoenig.com; Muenster & Koenig; SKirkelie@ci.puyallup.wa.us
Subject: RE: Bainbridge Island v. City of Puyallup, et al.; (SC #82374-0); Bainbridge Island Respondents' Motion for Extension of Time; Respondents' Answer to Statement of Grounds for Direct Review; Respondents' Brief

Received 8-27-09

From: Maureen Pattsner [mailto:maureen@christielawgroup.com]
Sent: Thursday, August 27, 2009 2:30 PM
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Subject: Bainbridge Island v. City of Puyallup, et al.; (SC #82374-0); Bainbridge Island Respondents' Motion for Extension of Time; Respondents' Answer to Statement of Grounds for Direct Review; Respondents' Brief

Dear Clerk:

Attached please find the Bainbridge Island Respondent's Motion for Extension of Time to Answer Statement of Grounds for Direct Review; Answer to Statement of Grounds for Direct Review; and Response Brief. Service is made electronically as previously arranged by counsel.

Sincerely,

Maureen Pattsner